



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

I

[REDACTED]
BCS/157903

PRELIMINARY RECITALS

Pursuant to a petition filed May 27, 2014, under Wis. Stat. § 49.45(5)(a), to review a decision by the Washington County Department of Social Services in regard to Medical Assistance, a hearing was held on July 15, 2014, at West Bend, Wisconsin.

The issue for determination is whether the agency properly denied BadgerCare Plus benefits for Petitioner and her husband and Medicaid benefits for the Petitioner effective May 1, 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

I

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Julie Williamson

Washington County Department of Social Services
333 E. Washington Street
Suite 3100
West Bend, WI 53095

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Washington County.
2. Petitioner's household size was 2 adults and 3 children until mid-July, 2014 when her oldest daughter moved out of the household.

3. On May 5, 2014, the agency issued a Notice of Decision to the Petitioner informing her that Petitioner and her husband are not eligible for BadgerCare Plus due to income exceeding the program limit.
4. Household income included \$370/week for Petitioner's unemployment compensation benefits, \$45.50/month for child support for each of two children, \$1,450.90/month for Petitioner's husband's social security income and \$363/month for one child's social security income.
5. Petitioner's shelter expense is \$1,175/month. The Petitioner's husband has a Medicare premium of \$104.90/month.
6. On May 27, 2014, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

BadgerCare Plus (BC+) is a Wisconsin variant of the MA program, for non-elderly, non-disabled Wisconsin residents. The Petitioner meets the nonfinancial eligibility tests for the program. The program's financial eligibility standards were changed by state law effective April 1, 2014, to exclude adults with adjusted gross household income exceeding 100% of the federal poverty level (FPL). Wis. Stat. § 49.471(4)(a)4; 2013 Wisconsin Act 116, § 29, for effective date; BC+ Eligibility Handbook (BCPEH), § 16.1, online at <http://www.emhandbooks.wisconsin.gov/bcplus/bcplus.htm> (viewed in July 2014).

The 100% FPL amount is \$2,325.83 for a household of five, and \$1,987.50 for a household of four persons in 2014. *Id.*, § 50.1.

The Petitioner has a minor child who resides with her and is expected to be her tax dependent. Because the child is "not expected to be required to file a tax return" for 2014, the child's income of \$363 monthly is not counted towards the petitioner's household income for BCP eligibility. BCPEH, § 16.1.3.

The agency calculated a gross monthly household income amount for the Petitioner of \$2,930.90, based on the Petitioner UC benefits and her husband's verified Social Security income. From gross income, the agency is allowed to subtract only those income tax deductions listed on lines #16 - #19 of the federal 1040A tax return (or lines #23-35 on the 1040 return), subject to modifications listed at 42 C.F.R. § 435.603(e). The Petitioner did not identify any of these adjusted gross income deductions as being applicable here.

Adjusted gross income for tax purposes does not normally include all of a person's Social Security benefit. However, for BC+ purposes, all Social Security income is included:

(2) Modified adjusted gross income. Modified adjusted gross income means adjusted gross income (within the meaning of section 62) increased by—

- (i) Amounts excluded from gross income under section 911;
- (ii) Tax-exempt interest the taxpayer receives or accrues during the taxable year; and
- (iii) Social security benefits (within the meaning of section 86(d)) not included in gross income under section 86.

26 C.F.R. § 1.36B-1(e)(2), cross-referenced from 42 C.F.R. § 435.603(i). See also, BCPEH, § 16.5, item #3.

Thus, the agency correctly calculated the Petitioner's household income to be \$2,930.90. The agency testified that this is over the income limit of \$1,986.50 for a household of four. It appears that the oldest daughter was excluded from the group. It is not clear to me why the oldest daughter was excluded because she did not move from the household until July. However, the household income is still over the income limit of \$2,325.83 for a household of five.

I cannot deviate from the income requirements established under state law. Therefore, I affirm the agency's determination that the Petitioner and her husband are not eligible for BC+ due to income exceeding the program limit.

CONCLUSIONS OF LAW

The agency correctly determine the Petitioner and her husband are not eligible for BC+ due to income exceeding the program limit.

THEREFORE, it is **ORDERED**

That the Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 21st day of July, 2014

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on July 21, 2014.

Washington County Department of Social Services
Division of Health Care Access and Accountability